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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEPHEN LIEBB,

No. 04-04213 CW

Petitioner,

ORDER GRANTING,
IN PART,
CERTIFICATE OF
APPEALABILITY

v.

VINCE CULLEN, Acting Warden,

Respondent.

/

Petitioner filed a habeas corpus petition pursuant to 28 U.S.C. § 2254, challenging as a violation of his due process rights a denial of parole by the California Board of Parole Hearings (Board). On May 12, 2008, the Court entered judgment denying the petition. Petitioner has appealed and the Ninth Circuit has remanded for this Court to determine whether to issue a certificate of appealability.

A habeas petitioner may not appeal a final order in a federal habeas proceeding without first obtaining a certificate of appealability (formerly known as a "certificate of probable cause to appeal"). 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b); Hayward v. Marshall, 2010 WL 1664977, at *5 (9th Cir. Apr. 22, 2010) (en banc) (holding certificate of appealability required in habeas cases challenging denial of parole). A certificate of

1 appealability should be granted "only if the applicant has made a
2 substantial showing of the denial of a constitutional right." 28
3 U.S.C. § 2253(c)(2). The certificate of appealability must
4 indicate which issue or issues satisfy the showing required by
5 § 2253(c)(2). 28 U.S.C. § 2253(c)(3).

6 The Court finds that Petitioner has made a sufficient showing
7 of the denial of a constitutional right in regard to the claim that
8 his due process rights were violated by the denial of parole by the
9 Board but has not made such a showing in regard to his due process
10 claim based on the sentencing matrix. The Court notes that it
11 granted Petitioner's petition for writ of habeas corpus addressing
12 a later denial of parole by the Board in case number C 08-2643 CW.
13 The judgment granting the petition has been appealed by Respondent.

14 CONCLUSION

15 Accordingly, the Court grants, in part, a certificate of
16 appealability to Petitioner.

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18 IT IS SO ORDERED.

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20 Dated: May 28, 2010


21 CLAUDIA WILKEN
22 United States District Judge

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